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MICHAEL RODAK, JR.,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

THE PROCTER AND GAMBLE COMPANY
and FMC CORPORATION,
Petitioners,

v.

THE CITY OF CHICAGO,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Petitioners, The Procter and Gamble Company and FMC Corporation, pray that a Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals, as yet unreported, appears in Appendix A. The opinion of the District Court for the Northern District of Illinois, reported *sub nom. Soap and Detergent Ass'n* v. *Chicago,* 357 F.Supp. 44 (N.D. Ill. 1973), appears in Appendix B.

JURISDICTION

The judgment of the Court of Appeals was entered on January 15, 1975. Issuance of the mandate of the Court of Appeals has been stayed pending the filing of a petition to this Court for a writ of certiorari, as provided in Rule 41(b) of the Federal Rules of Appellate Procedure. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly held that only transportation facilities—boats, trains and trucks—are entitled to the full protection of the Commerce Clause, and that other forms of commerce are afforded a significantly lower degree of protection against local impediments and burdens.

2. Whether a local ordinance is valid under the Commerce Clause of the Constitution where it does not serve any existing local purpose or need and, as the trial court found, it creates serious impediments to the free movement of safe and effective products in interstate commerce.

3. Whether the Court of Appeals, in an effort to strike a "compromise" among the decisions of this Court, failed to apply well-settled rules regarding the proper application of the Commerce Clause to local legislation that burdens interstate commerce.

STATUTES INVOLVED

This case involves an ordinance adopted by the City of Chicago, Code 17-7.3 (1973), and the Commerce Clause of the Constitution of the United States, Article I, section 8, clause 3. Both are printed in Appendix C.

STATEMENT OF THE CASE

An ordinance adopted by the City Council of Chicago on October 14, 1970, prohibits the sale or distribution within the City of detergent products that contain phosphorus in any quantity or form. Violations of the ordinance are punishable by fine or, for second and subsequent offenses, by incarceration in the county jail for a period not to exceed six months. Nothing in the terms of the ordinance describes or identifies any purposes that it might be intended to achieve. The City Council did not adopt a declaration of policy or other explanatory statement to accompany the ordinance. The ordinance was adopted by the Council upon the recommendation of its Committee on Environmental Quality, but the Committee did not prepare written findings or submit a written report to the Council.

Petitioners here are The Procter and Gamble Company ("Procter") and FMC Corporation ("FMC"). Procter, directly and through subsidiaries, is a principal manufacturer of phosphate detergent products that are distributed and sold in Chicago, throughout the United States, and in numerous foreign countries. FMC is a principal manufacturer of phosphate compounds that are sold and distributed by FMC to Procter and other firms for use in the manufacture of detergent products. Detergent products containing phosphates manufactured by FMC are sold in Chicago and throughout the United States.

On May 4, 1971, this action was instituted in the United States District Court for the Northern District of Illinois, seeking declaratory and injunctive relief on the ground that the ordinance imposes an impermissible burden on interstate commerce, in violation of

the Commerce Clause of the Constitution.[1] Petitioners urged that phosphates are harmless and useful ingredients of numerous detergent products. Such products are in common use by households and commercial firms throughout the United States and the world, and have proved to be safe and effective for the performance of many cleaning tasks. Petitioners contended that the ordinance will severely impede the national distribution of detergent products, result in large additional costs, and prevent the sale of such products to consumers in wide areas outside Chicago. They urged that the ordinance does not serve any local purpose or need.

The City contended that the ordinance is intended to protect the Illinois and Mississippi Rivers, Lake Michigan, and various ancillary waterways[2] against excessive algal growth. If algae[3] are present in waterways in excessive quantities, they may result in a reduction of the oxygen content of such waters and cause a mildly offensive odor. Excessive algal growth limits the recreational usage of lakes and waterways, but it does not in any way threaten public health or safety.

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[1] The action was originally instituted by the Soap and Detergent Association, but petitioners, as well as Monsanto Company and Amway Corporation, subsequently joined as plaintiffs. The District Court ultimately held that the complaint should be dismissed as to the Association, Monsanto and Amway.

[2] The system of rivers and other waterways that flows from the City of Chicago into the Illinois River and ultimately into the Mississippi River is sometimes described in the record of this case, as well as in the opinions below, as the Illinois Waterway. For convenience, the same descriptive phrase is sometimes used in this petition.

[3] The term "algae" includes numerous varieties of aquatic plants.

Proceedings in the trial court. The District Court conducted a thirteen-day trial, at which elaborate scientific and other evidence was presented. Following trial, and after the submission of extensive briefs and memoranda, the court issued a detailed opinion that included careful factual findings. Based upon those findings, it held that the ordinance is in violation of the Commerce Clause, and granted declaratory and injunctive relief to petitioners.

The District Court found that phosphorus is "a natural and benign element" present in all living organisms, "including the human body" (B-6); that such detergents are "more effective" cleaning agents than nonphosphate products, and, unlike various alternative products, are "not at all harmful" to those who use them, or who wear clothing or use utensils washed in them (*id.*); and that phosphates are not pollutants and are used by some municipalities for purposes of water purification.

With respect to the City's contentions, the trial court found that enforcement of the ordinance had not provided, and could not be expected to provide, additional protection against excessive algal growth. (B-9-11.) It found that no problem of algal growth now exists in the Illinois or Mississippi Rivers, or in any ancilliary waterways that receive effluent from Chicago. The court concluded that the waters that receive effluent from Chicago are so muddy that sunlight cannot stimulate algal growth, and that periodic flushing by high water prevents the rooting of algae. Trace elements found in those waters also inhibit algal growth. (B-9.) In these circumstances, the presence of phosphorus and other nutrients is irrelevant. What-

ever the quantities of phosphorus in the Waterway, there is no realistic possibility of excessive algal growth.

Moreover, the trial court held that, even if these physical barriers were to be disregarded, the ordinance could not provide significant protection against algal growth. (B-9-10.) It found that the Waterway already contains a high level of phosphates contributed by leaves and other natural sources, the runoff of agricultural fertilizers, human and animal wastes, and industrial effluent. The quantities of phosphate contributed by detergents are "surplus," and can have "no effect on the growth of algae." (B-10.) Convincing evidence was presented to the trial court that the ordinance is "not justified" for the purpose of preventing algal growth. (*Id.*)

The City's claims with respect to the possibility of algal growth in Lake Michigan were also found to be unsupported by the evidence. The District Court specifically found that no "appreciable amount" of sewage from Chicago is permitted to flow into the Lake. (B-12.) Sewage from Chicago is released into the Lake only during periods of unusually heavy rainstorms, if the local sanitary facilities have become temporarily overloaded. This has occurred only four times in the past 10 years, and in each instance the discharge into the Lake was "relatively minimal." (*Id.*) The court concluded that the ordinance could not be justified by any claim that it might help to protect Lake Michigan against algal growth. (B-13.)

The trial court found without qualification that enforcement of the ordinance had "seriously disrupted the flow of interstate commerce." (B-6.) Phosphate

detergents distributed in Chicago are manufactured in plants located throughout the midwest, sold to distributors of household products, and stored by them in warehouses. The warehouses that serve Chicago also serve retail stores in northern Illinois, southern Wisconsin, Michigan and Indiana. The court found that several important burdens had been imposed upon commerce by the ordinance:

> (a) The ordinance prevents the distribution and sale of all phosphate detergent products, although such products are in widespread use throughout the United States, and have been found to be safer and more effective for many household and commercial purposes than any alternative product. (B-6.)
>
> (b) Enforcement of the Chicago ordinance will prevent the distribution and sale of phosphate detergents in wide areas outside Chicago, both in Illinois and in adjacent states. (B-7.)
>
> (c) Compliance with the ordinance will require Procter to revise drastically its manufacturing and distributional processes, and to adopt a series of "uneconomical makeshifts." As a result, Procter will incur increased costs of approximately $2.5 million annually. (B-7.)
>
> (d) Enforcement of the ordinance compelled Procter to halt all of its sales of detergent products for a period of several months, until safe but less effective nonphosphate products could be formulated. In the interval, Procter lost sales amounting to approximately $4.7 million. (B-7.)
>
> (e) FMC will lose annual sales of approximately $500,000 as a consequence of the ordinance. (B-8.)

The trial court noted that a "patch-work pattern" of ordinances and statutes has been adopted by other

state and local governments to regulate the distribution and sale of phosphate detergents. (B-3.)[4] Those ordinances and laws create disparate requirements with respect to phosphate content, the categories of products to which they are applicable, and other pertinent matters. This "diverse" pattern of requirements has already imposed large additional costs upon manufacturers and distributors. (*Id.*)

Proceedings in the Court of Appeals. The Court of Appeals declared that this case involves "a very difficult constitutional problem." (A-20.) It acknowledged that it had serious doubts as to the "precise test" that is applicable here (A-6), and concluded that an appropriate standard could be formulated only by striking a "compromise" among the decisions of this Court. For this purpose, the court fashioned a series of novel constitutional requirements premised on the proposition that the Commerce Clause was chiefly intended to shield interstate transportation against local regulation, affording products that move in commerce a markedly lower standard of protection. It concluded that the Chicago ordinance must be sustained unless petitioners could demonstrate that it could "never" at any future time assist in the prevention of algal growth. (A-18.)

The Court of Appeals did not reject the detailed and extensive factual findings made by the District Court

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[4] A partial listing of such ordinances and statutes is included in the appendix to the City's brief in the Court of Appeals. 1 Appendix 93-98. For example, the municipalities of Cocoa Beach and Kissimmee in Florida, Bridgeton and Kennebunkport in Maine, and Painesville and Independence in Ohio have all adopted such ordinances. Some such ordinances forbid the inclusion of any phosphorus; others permit the inclusion of only limited quantities of phosphorus; and still others exempt various categories of detergent products. *Id.* at 96-98.

regarding the burden imposed on interstate commerce by the ordinance. It chose instead to characterize that burden as merely "incidental" and "slight." (A-13, 15.) The court "recognize[d]" that the ordinance would interfere with the distribution of phosphate detergents in areas outside Chicago, but it suggested, without reference to any evidence, that a method could "probably" be found to provide such products to consumers in such areas. (A-15.)

Although the Court of Appeals acknowledged that "credible evidence" had been presented that no problem of algal growth now exists in the Illinois Waterway, it "assume[d]" that such algae may nonetheless be present and that there may be a "possibility" that additional growth may occur in the future. (A-17-18.) Despite the District Court's findings, and without reference to any evidence, it suggested that the "prospect" for future algal growth is "unknown." (A-18.)

The Court of Appeals recognized that phosphates already present in the Waterway from other sources substantially exceed the quantities needed for algal growth. It agreed that even the introduction of large additional quantities of phosphates would not stimulate increased algal growth. Nonetheless, the court stated that petitioners had not demonstrated with the requisite conclusiveness that the present situation could not change, or that the ordinance might not at some future time help to prevent such growth. (A-18.) On this basis, the Court of Appeals reversed the judgment entered by the District Court.

REASONS FOR GRANTING THE WRIT

This case involves questions of national significance regarding the proper application of the Commerce

Clause to local legislation. It presents fundamental issues, applicable to numerous forms of commerce, regarding the extent to which municipal authorities are permitted to create local impediments to the free movement in interstate commerce of safe and beneficial products. The Court of Appeals acknowledged that this case involves "a very difficult constitutional problem" (A-20), and expressed serious uncertainty as to the proper application of the decisions of this Court. (A-6.) This case affords the Court an important opportunity to resolve such uncertainties and to make clear the principles that should be used to accommodate local legislation to the overriding requirements of the Commerce Clause.

The Court of Appeals reasoned that the constitutional standards applicable here may be determined only by striking a "compromise" among the decisions of this Court. (A-9.) In so doing, it fashioned novel requirements, the application of which will encourage the adoption of disparate and conflicting local restrictions upon the movement in interstate commerce of safe and beneficial products. The free national market for manufactured goods, upon which much of the nation's economic vitality depends, would be divided and balkanized. Review by this Court is urgently needed to reestablish the strong protection that the Commerce Clause was intended to provide.

I. Contrary to the Decisions of This Court, the Court of Appeals Has Unjustifiably Limited the Protection Afforded by the Commerce Clause to Products Moving in Interstate Commerce.

The Court of Appeals held that the full protection of the Commerce Clause is extended only to methods of interstate transportation, and that the free move-

ment of manufactured goods is entitled only to a much lower degree of protection. It assumed that the Clause was designed chiefly for the protection of the instrumentalities of commerce—boats, trains and trucks—and not for commerce itself. The low standard of protection permitted by the court for manufactured goods, together with the other unjustifiable requirements it imposed, would create a broad exception to the protection previously afforded by the Commerce Clause. Continued application of the exception would permit the destruction of the free national market for numerous forms of commerce.

The court's assumption that the full protection of the Commerce Clause extends only to transportation facilities is contrary both to the Founders' intentions and to the decisions of this Court. Alexander Hamilton emphasized in support of the new Constitution that it was designed to prohibit local trade barriers and embargoes, and to assure "a free circulation" of "commodities" through every part of the nation. *The Federalist,* No. 11. Similarly, James Madison declared that the Founders sought to foster a national economy, in which goods from every locality could be freely distributed, without impediments created by "rival, conflicting and angry regulations." 3 Farrand, *The Records of the Federal Convention of 1787* at 547 (1937).

This Court has consistently adhered to the same goals. It has repeatedly emphasized that local authorities may not regulate interstate commerce "so as substantially to affect its flow or deprive it of needed uniformity in its regulation. . . ." *Southern Pacific Co.* v. *Arizona,* 325 U.S. 761, 775 (1945). The Commerce Clause creates a "policy of free trade," *Bibb* v. *Nav-*

ajo Freight Lines, Inc., 359 U.S. 520, 529 (1959), that is intended to shield the national economy against both "interference by the States," *Freeman* v. *Hewit*, 329 U.S. 249, 252 (1946), and "local entanglements." *National Bellas Hess, Inc.* v. *Department of Revenue*, 386 U.S. 753, 760 (1967). In *Hood & Sons* v. *DuMond*, 336 U.S. 525 (1949), the Court summarized the purposes of the Commerce Clause in terms that closely follow those used by Hamilton and Madison:

> "Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation, that no home embargoes will withhold his exports, and no foreign state will by custom duties or regulations exclude them. Likewise, every consumer may look to the free competition from every producing area in the Nation to protect him from exploitation by any. Such was the vision of the Founders; such has been the doctrine of this Court which has given it reality." *Id.* at 539.

Only this Term, the Court reiterated the principles summarized in *DuMond*, and emphasized that the "philosophy" of the Commerce Clause is "to federalize the regulation of interstate and foreign commerce," and thereby to provide protection against local barriers and embargoes. *Allenberg Cotton Co.* v. *Pittman*, —— U.S. ——, 42 L.Ed.2d 195, 204 (1974).

Nothing in the opinions of this Court or the history of the Commerce Clause suggests that its protection is limited to methods of transportation. To the contrary, this Court held in *Gibbons* v. *Ogden*, 9 Wheat. 1 (1824), that the Clause encompasses "commercial intercourse between nations, and parts of nations, in all its

branches. . . ." *Id.* at 189.[5] The Court has repeatedly emphasized that the Clause reaches far beyond methods of transportation to include every aspect of trade or business that, directly or indirectly, extends past the boundaries of a single state. *E.g., United States* v. *Southeastern Underwriters Ass'n,* 322 U.S. 533, 550 (1944); *Heart of Atlanta Motel, Inc.* v. *United States,* 379 U.S. 241, 254-55 (1964).

Consistent with the principle first announced in *Gibbons* v. *Ogden, supra,* the protection of the Clause has been given to every variety of commercial activity. Cantaloupes,[6] books and correspondence courses,[7] oleomargarine,[8] intoxicants,[9] shrimp,[10] natural gas[11] and other disparate products have all been held to be encompassed by the Clause. The narrow and grudging rule adopted by the Court of Appeals, by which pro-

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[5] The Court of Appeals has precisely reversed the problem presented in Gibbons v. Ogden, *supra.* In *Gibbons,* counsel argued that the Clause encompasses the "interchange of commodities," 9 Wheat. at 189, but not interstate transportation facilities. In this case, the Court of Appeals held that the Clause gives principal protection to boats and trains, and only inferior protection to commodities. Both positions are contrary to the constitutional standards to which this Court has long adhered.

[6] Pike v. Bruce Church, 397 U.S. 137 (1970).

[7] International Textbook Co. v. Pigg, 217 U.S. 91 (1910).

[8] Schollenberger v. Pennsylvania, 171 U.S. 1 (1898); Collins v. New Hampshire, 171 U.S. 30 (1898).

[9] Bowman v. Chicago & N. R. Co., 125 U.S. 465 (1888); Leisy v. Hardin, 135 U.S. 100 (1890). The application of the Commerce Clause to intoxicants is now limited by Section 2 of the Twenty-first Amendment, which authorizes the imposition under state law of restrictions upon the importation of liquor into a state.

[10] Toomer v. Witsell, 334 U.S. 385 (1948).

[11] Oklahoma v. Kansas Gas Co., 221 U.S. 229 (1911).

tection would be given principally to transportation facilities, is inconsistent with well-settled principles regarding the interpretation of the Commerce Clause. Review by this Court is urgently required to clarify the constitutional standards that are properly applicable here.

II. Contrary to the Decisions of This Court, the Court of Appeals Created an Unjustifiable Presumption Favoring the Validity of Local Impediments to Interstate Commerce.

The Court of Appeals acknowledged that, in accordance with the "predominant test" established by this Court, the validity of local legislation under the Commerce Clause must be determined by balancing any burdens imposed on interstate commerce against any local benefits. (A-7.) Nonetheless, the court relied upon *Brotherhood of Locomotive F.&E.* v. *Chicago, R.I. & P.R. Co.*, 393 U.S. 129 (1968), to suggest that this "predominant test" should not be applied to this case. Instead, the court appeared to treat the issues presented here as if the only applicable constitutional requirements were derived from the broad provisions of the Due Process Clause of the Fourteenth Amendment. On that basis, it fashioned a novel "presumption," unsupported by the decisions of this Court, to determine the constitutionality of the Chicago ordinance. (A-9-10.)

The Court of Appeals stated that whenever local legislation relates to matters of local concern, and the burden it imposes upon commerce can be characterized by an appellate court as "slight," the legislation must be "deemed" to be "reasonably effective" unless it is shown by "clear and convincing proof" that the legislation can never prove effective. (A-10.) The

court held that, in the absence of such evidence, it is unnecessary to balance the burdens imposed upon interstate commerce against any local benefits. The rule stated by the Court of Appeals, while general and imprecise, would plainly establish a strong presumption favorable to the validity of local legislation under the Commerce Clause.

This Court has specifically rejected the notion, adopted here by the Court of Appeals, that a presumption that local legislation has been validly enacted can be permitted to control the applicability of the Commerce Clause to that legislation. *Minnesota* v. *Barber*, 136 U.S. 313, 319 (1890). To the contrary, the Court stated in *Pike* v. *Bruce Church, supra,* that the application of the Commerce Clause requires the resolution of questions "of degree," involving the extent of any burden, the nature of any local interest, whether less burdensome methods are available to vindicate the local interest, and other similar matters. *Id.* at 142. The Court recognized that, although various formulae have been suggested for this purpose, it has in fact consistently resolved such questions through a "balancing approach." *Id.*[12] The Court has sought through such balancing to reach a proper "appraisal and accommodation of the competing demands of the state and national interests involved." *Southern Pacific Co.* v. *Arizona, supra* at 769. The refusal of the Court of Appeals to balance the relevant national and local interests is contrary to the requirements established in *Pike* v. *Bruce Church, supra,* and numerous other

[12] Similarly, Professor Freund has observed that the Court has "abandoned the merely verbal criteria" and sought "on a highly particularistic basis" to weigh local benefits against the burdens imposed on commerce. P. Freund, *The Supreme Court of the United States* 21 (Meridian ed. 1961).

cases. The presumption engrafted by the Court of Appeals to the principles long adhered to by this Court will create widespread and serious confusion among legislators and lower courts as to the proper application of the Commerce Clause.

The reliance of the Court of Appeals upon *Brotherhood of Locomotive F.&E.* v. *Chicago, R.I. & P.R. Co., supra,* was obviously misplaced. The issue there was whether a full-crew requirement established for railroads by Arkansas was in violation of various constitutional requirements, including the Commerce Clause. The controlling question was whether, as the union urged, the statute was reasonably designed to enhance the safety of railway employees. The Court emphasized that the evidence with respect to that question was "certainly conflicting and to a considerable extent inconclusive." *Id.* at 136. It held that "on this showing" state legislation involving possible threats to "lives and limbs" should not be disturbed. *Id.* at 140.

This case is markedly different. There is no possibility here of any "loss of lives and limbs." There is no question of public health or safety. The products involved here are commonplace articles of household use, employed safely by consumers and others throughout the United States and the world. Here, as in *Pike* v. *Bruce Church, supra* at 143, the local legislation is not intended to protect consumers against contaminated or unfit goods, and the broad discretion given to local authorities in such situations is inapplicable. In these circumstances, the decision of this Court in *Brotherhood of Locomotive Firemen* is inapposite, and the presumption of validity created by the Court of Appeals is in conflict with controlling principles to which this Court has consistently adhered.

III. The Court of Appeals Imposed Unjustifiable Evidentiary Burdens That Prevent the Proper Application of the Commerce Clause.

The Court of Appeals acknowledged that there is "clear" evidence that phosphorus is not "at this time" the "limiting factor" for algal growth in the Illinois Waterway. (A-18.) It agreed that the ordinance cannot have any "immediate effect" upon any possibility of such growth in the Waterway. (*Id.*) Nonetheless, the court held that, although the ordinance might not now contribute to the solution of any environmental problem, it must be sustained because petitioners had not demonstrated that it could "never" at any future moment prove helpful. (*Id.*)

In so doing, the court placed entirely unjustifiable burdens upon petitioners. In combination with the other rules adopted by the court, broad application of such an evidentiary requirement would deny manufactured goods any genuine degree of protection under the Commerce Clause. Protection would be limited to rare situations in which it could be shown unequivocally that local legislation is not merely useless now, but also that there can "never" be a distant moment at which it might prove useful. Application of the Commerce Clause would depend, as it did here in the Court of Appeals, upon unsupported speculations as to future possibilities. Any such rule would threaten the strong national purposes that the Clause was intended to serve.

IV. Application of the Constitutional Standards Adopted by the Court of Appeals Will Destroy the National Market for Detergents and Other Beneficial Products.

The Chicago ordinance is only part of a "patchwork pattern" of requirements regarding phosphate detergents that has been adopted by state and local authorities. (B-3.) The jurisdictions that have adopted such requirements are scattered throughout the United States. Many such jurisdictions are villages, towns and small municipalities.[13] They have adopted diverse requirements with respect to phosphate content, product exemptions and other important matters. These ordinances and laws threaten in combination to destroy the national market for detergent products and to create a series of disparate local markets, each with its separate tangle of local prohibitions and requirements.[14]

Moreover, each of these ordinances and laws may adversely affect the distribution of detergent products outside the jurisdiction that has adopted it. The District Court found, following the presentation of extensive evidence, that the distributional system for such products cannot be tailored to the particular de-

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[13] *Supra* at n. 4.

[14] The Court of Appeals disregarded such other ordinances and laws with the suggestion that they are only potentially in conflict. (A-11-12.) In fact, petitioners made an offer of proof at trial to establish that actual conflicts already exist. 1 Appendix 833-36. In any event, the Court of Appeals failed to consider the important burdens that are created by diverse and scattered local prohibitions, each of which serves to balkanize still further the national market. Here, as elsewhere, the court overlooked this Court's repeated admonition that the Commerce Clause is intended to establish a "policy of free trade," Bibb v. Navajo Freight Lines, Inc., *supra* at 529, and to eliminate local trade barriers and embargoes.

mands of each village and municipality. (B-6-7.) For this purpose, even a city as large and important as Chicago cannot be isolated from the areas that surround it. As a result, each such ordinance and law may interfere substantially with the distribution of detergent products in wide adjacent areas.[15]

The constitutional standards adopted by the Court of Appeals are not limited in application to phosphate detergent products. To the contrary, those standards create novel requirements that are fully applicable to all products that move in interstate commerce. For environmental and other justifications, state and local authorities have adopted, or now are considering, local prohibitions and requirements regarding a wide variety of other goods and manufactured products. Several cases have already arisen in the state and lower federal courts, and others may reasonably be anticipated.[16] Review by this Court is urgently needed to define the principles that should be used to determine the validity of such ordinances and laws. Without immediate guidance from this Court, judges and legislators will remain uncertain as to the proper application of the Commerce Clause, and the strong national policies embodied in the Clause will be seriously threatened.

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[15] The Court of Appeals acknowledged that the ordinance "does have an extraterritorial effect," that "the free flow in commerce of a particular product is disrupted," and that such a disruption "must be deemed a burden on interstate commerce." (A-13.)

[16] *E.g.*, American Can Co. v. Oregon Liquor Control Comm'n, 517 P.2d 691 (Ore. App. 1974); Society of Plastic Ind. v. New York City, 3 E.R.C. 1114 (N.Y. Sup. Ct. 1971); SDA v. Clark, 3 E.R.C. 1075 (S.D. Fla. 1971); SDA v. Offutt, 3 E.R.C. 1117 (S.D. Ind. 1971); Colgate-Palmolive Co. v. Erie County, 3 E.R.C. 1673 (N.Y. Sup. Ct. 1971).

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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